

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of the Verizon Telephone	)	WC Docket No. 04-440
Companies for Forbearance under	)	
47 U.S.C. § 160 (c) From Title II and	)	
<i>Computer Inquiry</i> Rules with Respect to	)	
Their Broadband Services	)	

**REPLY COMMENTS OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”) hereby submits its Reply Comments in the above-captioned proceeding.

NCTA is the principal trade association of the cable television industry in the United States. Its members include cable operators serving more than 90 percent of the nation’s cable television subscribers. In addition to providing multichannel video programming services, NCTA’s cable operator members also provide high-speed Internet access service and offer local telephone service using Internet Protocol as well as circuit-switched technology. NCTA’s members also include more than 200 cable programming networks and services, as well as suppliers of equipment and services to the cable industry.

**INTRODUCTION AND SUMMARY**

Verizon seeks forbearance from Title II and *Computer Inquiry* requirements that apply “to any broadband services offered by Verizon”<sup>1</sup> in accordance with the procedures set forth at

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<sup>1</sup> Petition of Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160 (c) from Title II and *Computer Inquiry* Rules with Respect to Broadband Services, WC Docket No. 04-440 (filed Dec.20, 2004) (“Petition”).

Section 10 (c) of the Communications Act.<sup>2</sup> If the Commission decides to grant Verizon's Petition, it should provide on its own motion the same relief to all similar broadband platforms, including broadband platforms of cable operators. This relief is appropriate because, if the Commission makes the determinations required by Sections 10 (a) and 10 (b) to grant forbearance to Verizon for its broadband services, similarly situated cable operators and other providers of broadband services satisfy the statutory standards and are entitled to the same relief.

In the alternative, the Commission may conclude that it is premature to act on Verizon's Petition.<sup>3</sup> Independently, the Commission may act in the *Broadband Nondominance* and *Wireline Broadband* proceedings. By taking action in these proceedings, presumably following the resolution of the *Brand X* case,<sup>4</sup> the Commission will be in a position to contemporaneously establish appropriate policies for cable modem and telephone company-provided broadband services.

The Commission should confirm, even though Verizon has not raised the issue, that even if it forbears from enforcing some or all Title II and *Computer Inquiry* requirements with respect to Verizon's broadband offerings, its ruling has no impact on the requirement that companies which offer services subject to Title VI must comply with Title VI.

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<sup>2</sup> 47 U.S.C. § 160 (c).

<sup>3</sup> Section 10 does not require Commission action on the Verizon Petition until March 2006.

<sup>4</sup> *Brand X Internet Services v. FCC*, 345 F.3d 1120 (9<sup>th</sup> Cir. 2003), *cert. granted* Dec. 3, 2004.

**I. IF THE COMMISSION GRANTS VERIZON’S PETITION IN WHOLE OR IN PART, IT SHOULD GRANT THE SAME RELIEF TO OTHER PROVIDERS OF BROADBAND SERVICES**

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If the Commission decides that forbearance from Title II and *Computer Inquiry* requirements is warranted for Verizon’s broadband services, NCTA requests that the agency simultaneously grant the same relief, on its own motion, to cable’s broadband platform and other broadband platforms. Verizon bases its Petition with respect to consumer services on the proposition that the Commission “*has already considered the state of the current broadband market and adopted a ‘hands off’ regulatory approach*”<sup>5</sup> for cable providers. Verizon cites the “Cable Broadband Ruling” in support of this proposition.<sup>6</sup> Verizon supports its “hands off” claim by noting that cable modem service was classified as a Title I “information service” and not a Title II “telecommunications service”; the *Computer Inquiry* rules would be waived for cable modem service to the extent they are applicable; if cable companies offer broadband transmission service to ISPs, they do so on a private carriage basis; and the Commission “tentatively concluded” that even if Title II is found applicable to cable modem service, it would forbear from applying Title II regulations to these services.<sup>7</sup>

The Commission is presently considering many similar questions in outstanding rulemaking proceedings. The agency may conclude that these other proceedings provide more appropriate venues for the resolution of the issues raised by the Petition.

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<sup>5</sup> Petition at 9 (emphasis in original).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 10-11.

If the Commission decides, however, that Verizon's Petition is not premature and should be granted, it should simultaneously grant the same relief to cable companies and other providers of broadband services. Section 10 provides the Commission with the authority to take this action. Moreover, as Chairman Powell and Commissioner Abernathy recently concluded, "the broadband market has no dominant incumbent service provider."<sup>8</sup> By taking this action, the Commission will ensure that if cable modem service is found subject to Title II, and Verizon's broadband services are found subject to forbearance, then cable modem other broadband services, and Verizon's broadband services, will be treated similarly.

## **II. WHETHER OR NOT ITS PETITION IS GRANTED, VERIZON MAY OBTAIN THE RELIEF IT SEEKS THROUGH OTHER PROCEEDINGS**

Verizon's Petition seeks basically the same result through the Section 10 forbearance process that the company is seeking in the *Wireline Broadband* proceeding.<sup>9</sup> In the *Wireline Broadband* proceeding, Verizon maintained that "The Commission Must Treat Local Telephone Company Broadband as It Treated Cable Modem Service in the *Cable Modem Declaratory Ruling*."<sup>10</sup> "The same conclusion,"<sup>11</sup> Verizon contends in this proceeding, must follow for the regulatory treatment of its broadband services. Verizon is correct that if it is unable to obtain the

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<sup>8</sup> Joint Statement of Chairman Michael K. Powell and Commissioner Kathleen Q. Abernathy, *Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband Over Power Line Systems; Carrier Current Systems, Including Broadband Over Power Line Systems*, ET Docket Nos. 04-37 and 03-104, FCC 04-245, 2004 FCC LEXIS 6134 at \*182 (rel. Oct. 1, 2004) ("*BPL Order*"), cited in Petition at 4, n. 10.

<sup>9</sup> *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) ("*Wireline Broadband NPRM*").

<sup>10</sup> Comments of Verizon, CC Docket No. 02-33, May 3, 2002, at 23.

<sup>11</sup> Verizon Petition at 23.

substantive relief it seeks in this proceeding, the company may still be able to achieve essentially the same substantive result in the *Wireline Broadband* proceeding.

The Commission tentatively concluded in the *Wireline Broadband* proceeding that access to the wireline broadband platform is an information service with a telecommunications component.<sup>12</sup> Following this tentative conclusion, the Commission sought comment on the implications of the tentative classification for wireline broadband services, the access requirements currently imposed upon unaffiliated ISPs and the application to the wireline platform of unbundling, security and disability obligations. Verizon's Petition raises similar issues. If the Commission resolves these matters in the *Wireline Broadband* proceeding, rather than in an RBOC-specific forbearance proceeding, the agency will be able to evaluate all of the relevant issues comprehensively and make generic determinations.

Many of the issues presented by Verizon could also be addressed by the Commission in the outstanding proceeding on the dominant or non-dominant status of broadband services provided by the RBOCs.<sup>13</sup> The comments submitted in that proceeding constitute an extensive record on the question of whether the Commission should continue to regulate incumbent local exchange carriers as dominant carriers in their provision of DSL and other broadband offerings. If the Commission so chooses, it may deal with a great many of these matters in the *Broadband Nondominance NPRM*.

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<sup>12</sup> *Wireline Broadband NPRM*, 17 FCC Rcd at 3029-34.

<sup>13</sup> *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001) ("*Broadband Nondominance NPRM*").

With the *Brand X* case, the *Wireline Broadband* proceeding and the *Broadband Nondominance NPRM* outstanding, deferral of action on the Verizon Petition until March 2006 is fully justified. Following a decision in *Brand X*, if the Commission so chooses, it may deny the Petition on the grounds that the issues raised by the Verizon Petition are more properly considered in comprehensive rulemakings, and addressing these matters through Section 10 forbearance at that time is not “consistent with the public interest.”<sup>14</sup> By considering these matters through existing rulemakings, the Commission may resolve the issues raised in the *Cable Modem NPRM* and the *Wireline Broadband* proceeding within the same timeframe.

**III. THE COMMISSION SHOULD CONFIRM THAT ANY DECISION IN THIS PROCEEDING IN NO WAY ALTERS THE STATUTORY REQUIREMENT THAT PROVIDERS OF CABLE SERVICE, INCLUDING TELEPHONE COMPANIES THAT PROVIDE CABLE SERVICE, MUST COMPLY WITH TITLE VI**

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The Petition seeks forbearance from Title II and *Computer Inquiry* requirements with respect “to any broadband services offered by Verizon.” It does not seek forbearance from Title VI requirements. Since Verizon has indicated its intention to offer cable service, the Commission should make clear that this proceeding will have no bearing on the applicability of Title VI to the company’s provision of cable service.

Although Verizon does not raise the applicability of Title VI to cable services in this proceeding, SBC, in a separate proceeding, seeks a declaratory ruling that its cable services are not subject to Title VI.<sup>15</sup> In light of SBC’s declaratory ruling request, the Commission should

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<sup>14</sup> See 47 U.S.C. § 160 (c).

<sup>15</sup> Petition of SBC Communications Inc. for a Declaratory Ruling (filed Feb. 5, 2004) at 34-42. The Commission has announced its intention to resolve SBC’s petition in the *IP-Enabled Services* docket. See Public Notice, Wireline Competition Bureau Extends Comment Deadlines for SBC’s “IP Platform Services” Forbearance Petition, DA 04-899 (Mar. 30, 2004), at n.2.

make clear in this proceeding that any relief granted to Verizon will not extend to cable service offered by Verizon under Title VI.

NCTA seeks this clarification to ensure that a proceeding focused exclusively upon broadband services outside of the scope of Title VI does not become a vehicle for the determination of regulatory requirements for cable services that are within the scope of Title VI. By limiting the scope of its ruling in this way, the Commission will guarantee that the parameters of its decision do not exceed the issues raised and properly briefed in the record, and enable the agency to avoid regulation pursuant to Title II of services properly within the purview of Title VI.

### **CONCLUSION**

For the foregoing reasons, the Commission should conclude either that all broadband services, including cable modem service, are subject to forbearance from Title II regulation, or defer action on Verizon's Petition to proceedings in which the Commission is considering generically the same issues raised by the Petition.

Respectfully submitted,

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